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In the Supreme Court
OF THE
United States

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OCTOBER TERM, 1937

THE UNITED STATES OF AMERICA,

Appellant,

vs.

MILO W. BEKINS and REED J. BEKINS, as
Trustees Appointed by the Will of Mar-
tin Bekins, Deceased, et al., etc.,

Appellees.

No. 757

LINDSAY-STRATHMORE IRRIGATION DISTRICT,

Appellant,

vs.

MILO W. BEKINS and REED J. BEKINS, as
Trustees Appointed by the Will of Mar-
tin Bekins, Deceased, et al., etc.,

Appellees.

No. 772

APPELLEES' PETITION FOR A REHEARING.

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No. 772

APPELLEES' PETITION FOR A REHEARING.

*To the Honorable Charles Evans Hughes, Chief Justice
of the United States, and to the Associate Justices
of the Supreme Court of the United States:*

Come now Milo W. Bekins and Reed J. Bekins, as
trustees appointed by the will of Martin Bekins, de-

ceased, Milo W. Bekins and Reed J. Bekins, as trustees appointed by the will of Katherine Bekins, deceased, J. R. Mason, James Irvine, A. Heber Winder as trustee for Eva A. Parrington Trust, C. A. Moss and James H. Jordan, appellees, and present this, their petition for a rehearing of the above-entitled cause, and in support thereof respectfully show:

POINT I. THE STATE HAS NOT CONSENTED.

The Court states:

“* * * the state has given its consent.”

In the brief and at the oral argument it was suggested by appellees that the title to the state act was not sufficiently comprehensive to embrace Chapter X. This was based upon Article IV, Section 24 of the California Constitution, which provides:

“Every Act shall embrace but one subject, which subject shall be expressed in its title. But if any subject shall be embraced in an Act which shall not be expressed in its title, such Act shall be void only as to so much thereof as shall not be expressed in its title * * *”

The more serious question, as to the state act, however, upon further consideration, lies in the fact that, if it be construed the Legislature intended the act to apply to future acts of Congress, the same would be void as an unlawful delegation of legislative authority.

Cal. Const., Art. IV, Sec. 1.

A similar situation arose under the Eighteenth Amendment. The State of California had enacted the so-called Wright Act adopting certain provisions of the Volstead Act, and the act was challenged on the ground that the Wright Act “purports to adopt also

the future provisions which may be hereafter enacted by Congress", and the Supreme Court said, in relation to such provision,

"It may be conceded that this provision is not valid, although we do not decide it, since it is not involved".

Ex parte Burke, 190 Cal. 326, 328. Approved in *Brock v. Superior Court*, 94 Cal. Dec. 135.

POINT II. THE PURPORTED CONSENT OF THE STATE IS AN UNLAWFUL DELEGATION OF JUDICIAL POWER.

Article VI, Section 1 of the California Constitution provides that the judicial power of the state shall be vested in certain courts.

If it be deemed that the consent of the state is effective, it would seem that it is effective for only one purpose, and that is to confer jurisdiction upon a federal bankruptcy court.

It seems to be conceded by the opinion in this case that without the consent of the state the bankruptcy power of Congress would be incomplete.

The state has no power to confer such authority upon its own courts or in any manner to effect the result here sought.

The consent of the state, therefore, seems to amount to an attempt to confer jurisdiction upon a federal court.

Ex Parte Knowles, 5 Cal. 300;

Duffy v. Hobson, 40 Cal. 240;

Van Camp Sea Food Co., Inc. v. State Fish and Game Commission, 75 Cal. App. 764.

POINT III STATE CONSENT DOES NOT ENLARGE
THE POWER OF CONGRESS.

This Court said in the case of

In re Rahrer, 140 U. S. 545, 560:

"It does not admit of argument that Congress can neither delegate its powers nor enlarge those of a State."

The converse must likewise be true.

See

U. S. v. Constantine, 56 Sup. Ct. 223, 296 U. S. 287.

If it is the intention of the Court to overrule the principle laid down in this case and in the case of

Pollard v. Hagan, 3 How. 212,

it would appear that the opinion ought to be clarified to that extent. In the latter case the Court said in part, speaking of an agreement between Alabama and the Federal Government:

"And, if an express stipulation had been inserted in the agreement, granting the municipal right of sovereignty, and eminent domain to the United States, such stipulation would have been void and inoperative; because, the United States have no constitutional capacity to exercise municipal jurisdiction, sovereignty, or eminent domain, within the limits of a State or elsewhere, except in the cases in which it is expressly granted * * *"

And the Court used this very pertinent language of the act of Congress requiring Alabama's disclaimer:

"Every constitutional act of Congress is passed by the will of the people of the United States, expressed through their representatives, on the sub-

ject matter of enactment; and when so passed it becomes the supreme law of the land, and operates by its own force on the subject matter, in whatever State or territory it may happen to be. The proposition, therefore, that such a law cannot operate upon the subject matter of its enactment, without the express consent of the people of the new State where it may happen to be, contains its own refutation, and requires no farther examination."

Dealing also with the subject of compacts, this Court said:

"Then to Alabama belong the navigable waters, and soils under them, in controversy in this case, subject to the rights surrendered by the Constitution to the United States; and no compact that might be made between her and the United States could diminish or enlarge these rights."

POINT IV. GENERAL SOVEREIGNTY MUST YIELD TO CONSTITUTIONAL PROHIBITION.

It is stated in the opinion:

"It is of the essence of sovereignty to be able to make contracts and give consents bearing upon the exertion of governmental powers."

Generally this is no doubt true, but by Article I, Section 10 of the Federal Constitution it is provided:

"No state shall * * * pass any * * * law impairing the Obligation of Contracts * * *"

and by Article I, Section 16 of the California Constitution it is provided:

"No * * * law impairing the obligation of contracts, shall ever be passed."

Any necessary consent in this case would seem to do violence to these constitutional inhibitions.

POINT V. THE CONTRACT CLAUSE MUST BE CONSIDERED IN CONNECTION WITH ANY CONSENT OF THE STATE.

The opinion then states:

"The reservation to the States by the Tenth Amendment protected, and did not destroy, their right to make contracts and give consents where that action would not contravene the provisions of the Federal Constitution."

Since the consent of the state, if at all necessary to the exercise of the power, would seem to be a clear violation of the contract clause, such consent would appear to be prohibited.

POINT VI. THE STATE MAY MAKE SUCH CONTRACTS AS IT WILL, BUT WHEN MADE THEY MUST BE RESPECTED.

It is stated in the opinion:

"The State is free to make contracts with individuals and give consents upon which the other contracting party may rely with respect to a particular use of government authority."

This is conceded in a general sense. But it is respectfully suggested that after such a contract is made by the state, it has not the power to change, modify,

repudiate, or destroy that contract without the consent of the other contracting parties. In other words, it is without power to impair the obligations of the contract which it has made.¹

Under the contract clause it will be noted that no state shall pass "any" law impairing the obligation of contracts. The word "any" seems to be all comprehensive. Whether the law be one of direct repudiation, one repealing a grant as was done in the Georgia case, or simply a necessary consent, it seems to come within the prohibition.²

1. In support of the Court's statement above quoted under this point, the great decision of this Court in *Fletcher v. Peck*, 6 Cranch 87, 137, is cited. It will be noted that Mr. Chief Justice Marshall in that case held an act of the Legislature of Georgia void, where the Legislature attempted to rescind a grant theretofore made by the state. The act was held void, because it impaired the obligation of contract.

The Chief Justice in that case pointed out with peculiar force the reason for the contract clause, and said:

"Whatever respect might have been felt for the states' sovereignties, it is not to be disguised that the framers of the constitution viewed, with some apprehension, the violent acts which might grow out of the stealing of the moment; and the people of the United States, in adopting that instrument, have manifested a determination to shield themselves and their property from the effects of those sudden and strong passions to which men are exposed. The restrictions on the Legislative power of the states are obviously founded in this sentiment; and the Constitution of the United States contains what may be deemed the bill of rights for the people of each state."

2. Mr. Chief Justice Hughes said, speaking for the Court in the case of *Home Building & Loan Assn. v. Blaisdell*, 290 U. S. 398, 54 S. Ct. 231:

"But the reasons which led to the adoption of that clause, and of the other prohibitions of section 10 of article I, are not left in doubt, and have frequently been described with eloquent emphasis. The widespread distress following the revolutionary period and the plight of debtors had called forth in the States an ignoble array of legislative schemes for the defeat of creditors and the invasion of contractual obligations. . . . It was necessary to interpose the restraining power of a central authority in order to secure the foundations even of 'private faith'. The occasion and general purpose of the contract clause are summed up in the terse statement of Chief Justice Marshall in *Ogden v. Saunders*, 12 Wheat. 213, 354, 355, 6 L. Ed. 606: 'The power of changing the relative situation of debtor and creditor, of interfering with contracts, a power which comes home to every man, touches the interest of all, and controls the conduct of every individual in those things which he supposes to be proper for his own exclusive management, had been used to such an excess by the state legislatures, as to

POINT VII. THE MAKING OF COMPACTS BETWEEN STATES WITH CONSENT OF CONGRESS IS EXPRESSLY AUTHORIZED.

The opinion states:

"The states with the consent of Congress may enter into compacts with each other and the provisions of such compacts may limit the agreeing States in the exercise of their respective powers."

The power to make compacts, with the consent of Congress, is expressly authorized by Article I, Section 10, Clause 3 of the Federal Constitution.

**POINT VIII. THE CONSTITUTIONAL PROHIBITION WITH-
DRAWS THE CASE FROM THE ANALOGY OF INTERNATIONAL LAW.**

In the opinion, after stating that it is of the essence of sovereignty to be able to make contracts and give

break in upon the ordinary intercourse of society, and destroy all confidence between man and man."

The Court discusses the history of the contract clause and cites the decision of *Ex Parte Milligan*, 4 Wall. 2, 120, 121, quoting:

"No doctrine involving more pernicious consequences, was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government. Such a doctrine leads directly to anarchy or despotism. * * *"

The Court says further:

"* * * as there must always follow from such a course, a long trail of ills; one of the direct consequences being a loss of confidence in the government and in the good faith of the people * * * This state of things alarmed all thoughtful men, and led them to seek some effective remedy."

The *Federalist*, by Madison, No. 44, is quoted as saying:

"One legislative interference is but the first link of a long chain of repetitions, every subsequent interference being naturally produced by the effects of the preceding."

And the Court concludes:

"* * * the foregoing leaves no reasonable ground upon which to base a denial that the clause of the Constitution now under consideration was meant to foreclose state action impairing the obligation of contracts *primarily and especially* in respect of such action aimed at giving relief to debtors in time of emergency."

consents bearing upon the exertion of governmental power, the Court said:

"This is constantly illustrated in treaties and conventions in the international field by which governments yield their freedom of action in particular matters in order to gain the benefits which accrue from international accord."

It is respectfully suggested that we find nothing in international law placing a prohibition upon a sovereign analogous to the contract clause of the Constitution.

POINT IX. THE STATE CANNOT CONSENT TO BE TAXED.

The Court points out in the opinion that instrumentalities of the national government, while immune from taxation by states, may be so taxed if the national government consents, and then states:

"and by a parity of reasoning the consent of the State could remove the obstacle to the taxation by the federal government of state agencies to which the consent applied."

The Federal Constitution is one of delegated powers. It has been held that the power to tax is the power to destroy, and that if the state as an independent sovereign within its field could tax the instrumentalities of the Federal Government, then the state would have it within its power to seriously hinder the exercise of the great powers delegated to the United States, but there seems to be nothing in the Constitution to prevent Congress, if it saw fit, from waiving such immunity in a particular case.

Now when we turn to the state constitution we find that they are limitations on power. The ultimate sovereignty, of course, rests in the people. The Legislatures of the several states may exercise that full sovereign power except as the legislative right is limited by the people in their constitution. Now in California we find that by Article IV, Section 31 of the Constitution the Legislature is denied the right to give or to lend or to authorize the giving or the lending of the credit of the state, or of any county, etc.²

3. Article IV, Section 31.

The Legislature shall have no power to give or to lend, or to authorize the giving or lending, of the credit of the State, or of any county, city and county, city, township or other political corporation or subdivision of the State now existing, or that may be hereafter established, in aid of or to any person, association, or corporation, whether municipal or otherwise, or to pledge the credit thereof, in any manner whatever, for the payment of the liabilities of any individual, association, municipal or other corporation whatever; nor shall it have power to make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation whatever; provided, that nothing in this section shall prevent the Legislature granting aid pursuant to section 22 of this article; and it shall not have power to authorize the State, or any political subdivision thereof, to subscribe for stock, or to become a stockholder in any corporation whatever; provided, further, that irrigation districts for the purpose of acquiring the control of any entire international water system necessary for its use and purposes, a part of which is situated in the United States, and a part thereof in a foreign country, may in the manner authorized by law, acquire the stock of any foreign corporation which is the owner of, or which holds the title to the part of such system situated in a foreign country; provided, further, that irrigation districts for the purpose of acquiring water and water rights and other property necessary for their uses and purposes, may acquire and hold the stock of corporations, domestic or foreign, owning waters, water rights, canals, waterworks, franchises or concessions subject to the same obligations and liabilities as are imposed by law upon all other stockholders in such corporation; and

Provided further, that nothing contained in this Constitution shall prohibit the use of State money or credit, in aiding veterans who served in the military or naval service of the United States during time of war, in the acquisition of, or payments for, farms or homes, or in projects of land settlement or in the development of such farms or homes or land settlement projects for the benefit of such veterans.

The California Veterans' Welfare Bond Act of 1921 (Statutes of 1921, Chapter 578), as enacted at the forty-fourth session of the Legislature of the State of California, authorizing the issuance and sale of State bonds in the sum of ten million dollars, for the purpose of creating a fund to carry out the provisions of the California Veterans' Welfare Act, providing land settlement for veterans (Statutes of 1921, Chapter 580), and the provisions of the "Veterans' Farm and Home Purchase Act", providing farm and home aid for veterans (Statutes of 1921, Chapter 519) is hereby approved, adopted, legalized, validated and made fully and completely

We presume that other states have somewhat similar provisions in their constitution. Now since the state instrumentalities are not taxable by the Federal Government as a matter of right, it may be seriously doubted that the Legislature could by any act authorize such taxation. Since such taxation would not be as a matter of right but as a matter of grace, it would be in the nature of a gift or a contribution. If that is the case, then such a gift or contribution is clearly prohibited to the Legislature of California. Of course the people could amend their constitution and make such a gift, but even then it would seriously be doubted that it could be construed as anything other than a contribution or a gift rather than taxes.

effective irrespective of the vote that may be cast upon the proposition of approving or disapproving such Veterans' Welfare Bond Act of 1921 at the general election of November 7, 1922. All provisions of this section shall be self-executing and shall not require any legislative action in furtherance thereof, but this shall not prevent such legislative action.

And provided, still further, that notwithstanding the restrictions contained in this Constitution, the treasurer of any city, county, or city and county shall have power and it shall be his duty to make such temporary transfers from the funds in his custody as may be necessary to provide funds for meeting the obligations incurred for maintenance purposes by any city, county, city and county, district, or other political subdivision whose funds are in his custody and are paid out solely through his office. Such temporary transfer of funds to any political subdivision shall be made only upon resolution adopted by the governing body of the city, county, or city and county directing the treasurer of such city, county, or city and county to make such temporary transfer. Such temporary transfer of funds to any political subdivision shall not exceed eighty-five per cent of the taxes accruing to such political subdivision, shall not be made prior to the first day of the fiscal year, nor after the last Monday in April of the current fiscal year, and shall be replaced from the taxes accruing to such political subdivision before any other obligation of such political subdivision is met from such taxes.

And provided, further, that the city of Glendale, of Los Angeles county, may, when authorized so to do, by a majority of the voters thereof voting at an election held for that purpose, pay from the surplus of the public service department of said city the amount of any assessment or assessments levied by said city between the eleventh day of May, 1921, and the ratification of this amendment, for the replacement of water mains, to the person or persons owning the property so assessed at the time said payment is so authorized; and that no statute of limitations shall apply in any manner.

POINT X. STATE FISCAL POWERS ARE IMPAIRED.

It is stated in the decision:

"We are thus brought to the inquiry whether the exercise of the federal bankruptcy power in dealing with the composition of the debts of the irrigation district, * * * must be deemed to be an unconstitutional interference with the essential independence of the State * * *

"In *Ashton v. Cameron County District*, supra, the court considered that the provisions of Chapter IX * * * 'might materially restrict its control over its fiscal affairs' * * *

"In enacting Chapter X the Congress was especially solicitous to afford no ground for this objection * * *

Notwithstanding that the act here in question authorizes the forcible changing of the bond contract as to those not consenting, there seems to be a clear inference, if not an actual statement, in the decision, that such forcible changing is not a material restriction upon the state over its fiscal affairs. The effect upon the states' power to borrow money, it is thought, can hardly be doubted. The true rule, in such case, seems well stated by this Court, through Mr. Chief Justice Hughes, in *James v. Dravo Contracting Co.*, decided at this term (Dec. 6, 1937) as follows:

"That doctrine recognizes the direct effect of a tax which 'would operate on the power to borrow before it is exercised' (*Pollock v. Farmers' Loan & Trust Co.*, supra), and which would directly affect the government's obligation as a continuing security. Vital considerations are there involved

respecting the permanent relations of the government to investors in its securities and its ability to maintain its credit; * * *

POINT XL THE DECISION DOES NOT SEEM CLEAR.

Under this heading it is with deference that we point, to what appears to be a serious uncertainty in the Court's opinion.

It seems rather clear that the decision is based largely upon the proposition that the state may consent to being bound by a bankruptcy statute, or that the state may cooperate with the Federal Government in bringing about a composition of its debts, and yet the Court states:

"It is immaterial, if the consent of the State is not required to make the federal plan effective, and it is equally immaterial if the consent of the State has been given * * *"

If the consent of the state is immaterial, then it would seem that the bankruptcy power in Congress is plenary and may be exercised over the state and its agencies in any way that the Congress may determine, whether voluntary or involuntary or whether applied to this agent or the state itself. If that power over the state is supreme, then it would seem to follow that the power of the state to make contracts, to give consent, to make compacts, and to waive its immunity from taxes, becomes unimportant.

**POINT XII. THE ASHTON DECISION IS NEITHER
OVERRULED NOR DISTINGUISHED.**

The *Ashton* case (*Ashton v. Cameron County Water Improvement District No. 1*, 298 U. S. 513) is not overruled, either directly or by inference. It does not even seem to be distinguished. After quoting briefly from the *Ashton* decision, the Court said:

“In enacting Chapter X the Congress was especially solicitous to afford no ground for this objection.”

Which in effect would seem to reaffirm the *Ashton* decision.

The Court in the *Ashton* case held that Chapter IX was sufficiently related to the subject of bankruptcy. In this case the Court said:

“* * * it is well settled that a proceeding for composition is in its nature within the federal bankruptcy power.”

So it seems perfectly clear that both in this case and in the *Ashton* case the Court was dealing with an act upon the subject of bankruptcy, both applied to a state agency. Furthermore, the same form of agency was involved in the *Ashton* case as is involved here.

☞ The words quoted from the *Ashton* decision, as follows: “might materially restrict its control over its fiscal affairs”, as indicated by the context, seems to show no different condition than is found in this case. The whole paragraph in which that quotation is found, is as follows:

“The power ‘To establish * * * uniform Laws on the subject of Bankruptcies’ can have no higher

rank or importance in our scheme of government than the power 'to lay and collect taxes'. Both are granted by the same section of the Constitution, and we find no reason for saying that one is impliedly limited by the necessity of preserving independence of the states, while the other is not. Accordingly, as application of the statutory provisions now before us *might materially restrict respondent's control over its fiscal affairs*, the trial court rightly declared them invalid." (Italics ours.)

The above paragraph is immediately followed by the very clear reasons for the statements therein contained, as follows:

"If federal bankruptcy laws can be extended to respondent, why not to the state? If voluntary proceedings may be permitted, so may involuntary ones, subject, of course, to any inhibition of the Eleventh Amendment. *Re Quarles*, 158 U. S. 532, 535, 39 L. Ed. 1080, 1081, 15 S. Ct. 959. If the State were proceeding under a statute like the present one, with terms broad enough to include her, apparently the problem would not be materially different. Our special concern is with the existence of the power claimed—not merely the immediate outcome of what has already been attempted. And it is of the first importance that due attention be given to the results which might be brought about by the exercise of such a power in the future."

The Court in this case, further referring to the *Ashton* case, said:

"* * * if obligations of States or their political subdivisions might be subjected to the interference

contemplated by Chapter IX, they would no longer be 'free to manage their own affairs'."

The above quotation, "free to manage their own affairs", from the *Ashton* decision is immediately explained in the *Ashton* decision by the following words:

"* * * the will of Congress prevails over them; although inhibited, the right to tax might be less sinister. And really the sovereignty of the state, so often declared necessary to the federal system, does not exist."

We refer at some little length to the *Ashton* case, not by way of argument, but to respectfully indicate that if this decision is to stand, then we will have two solemn declarations of this Court upon the same general subject, dealing with the same kind of an agency, both under the bankruptcy power, with no change in the act involved, except in phraseology, one denying the power, and the other holding the power to exist.

POINT XIII. THE COURT LEAVES UNDECIDED THE QUESTION OF THE VACATING OF THE INJUNCTION.

It will be remembered that the order of the trial Court vacating its injunction against the prosecution of the petition for writ of mandate issued by the State Court requiring the supervisors of Tulare County to take certain action was drawn into question. (R. 19, 25, 89, 92, 102.)

In appellees' brief (p. 45, 53) it is suggested that when the alternative writ of mandate was obtained,

directed to the Board of Supervisors by appellees, the appellees had obtained vested rights and that any interference by the Court would not only be an interference with the political power of the State, but with vested rights of appellees. The opinion seems to be silent upon this important point.

For the foregoing reasons, it is respectfully urged that this petition for a rehearing be granted and that the judgment of the District Court, Southern District of California, Northern Division, be, upon further consideration, affirmed.

Dated, Turlock, California,
May 12, 1938.

Respectfully submitted,

W. COBURN COOK,

CHARLES L. CHILDERS,

*Counsel for Appellees
and Petitioners.*

CERTIFICATE OF COUNSEL.

I hereby certify that I am of counsel for appellees and petitioners in the above entitled causes and that in my judgment the foregoing petition for a rehearing is well founded in point of law as well as in fact and that said petition for a rehearing is not interposed for delay.

Dated, Turlock, California,
May 12, 1938.

W. COBURN COOK,
*Of Counsel for Appellees
and Petitioners.*

SUPREME COURT OF THE UNITED STATES.

Nos. 757, 772.—OCTOBER TERM, 1937.

The United States of America, Appellant,

757

vs.

Milo W. Bekins and Reed J. Bekins,
as trustees, appointed by the will of
Martin Bekins, deceased, et al., etc.

Lindsay-Strathmore Irrigation Dis-
trict, Appellant,

772

vs.

Milo W. Bekins and Reed J. Bekins,
as trustees, appointed by the will of
Martin Bekins, deceased, et al., etc.

Appeals from the Dis-
trict Court of the
United States for the
Southern District of
California.

[April 25, 1938.]

Mr. Chief Justice HUGHES delivered the opinion of the Court.

These are direct appeals from the judgment of the District Court for the Southern District of California under the Act of August 24, 1937, c. 754, 50 Stat. 751. They present the question of the constitutional validity of the Act of August 16, 1937, 50 Stat. 653, amending the Bankruptcy Act by adding Chapter X providing for the composition of indebtedness of the taxing agencies or instrumentalities therein described. A certificate was issued to the Attorney General and the United States intervened. The District Court held the statute invalid as applied to the appellant and dismissed its petition for composition. The court considered itself bound by the decision in *Ashton v. Cameron County District*, 298 U. S. 513.

Appellant, the Lindsay-Strathmore Irrigation District was organized in the year 1915 under the California Irrigation District Act of March 31, 1897 (Cal. Stat. 1897, p. 254). It comprises about 15,260 acres in Tulare County. It is an irrigation district and taxing agency created for the purpose of constructing and

operating irrigation projects and works devoted to the improvement of lands for agricultural purposes. On September 21, 1937, it presented its petition for the confirmation of a plan of composition. The petition alleged insolvency; that its indebtedness consisted of outstanding bonds aggregating \$1,427,000 in principal, with unpaid interest of \$439,085.15; that no interest or principal falling due since July 1, 1933, had been paid; that the low price of agricultural products had prevented the owners of land within the irrigation district from meeting their assessments; that upon the assessment levied by the District in the year 1932 there was a delinquency of 47 per cent. and that since that year there had been levied only an assessment of sufficient amount to maintain and operate its works; that the District's plan for the composition of its debts provided for the payment in cash of a sum equal to 59.978 cents for each dollar of the principal amount of its outstanding bonds in satisfaction of all amounts due; that creditors owning about 87 per cent. in the principal amount of the bonds had accepted the plan and consented to the filing of the petition; and that payment of the amount required was to be made from the proceeds of a loan which the Reconstruction Finance Corporation had agreed to make upon new refunding serial bonds equal to the amount borrowed and bearing interest at four per cent.

The District Court approved the petition as filed in good faith and directed the creditors to show cause why an injunction should not issue staying the commencement of suits upon the securities affected by the plan. The appellees as bondholders appeared and moved to dismiss the petition upon the ground that Chapter X of the Bankruptcy Act violated the Fifth and Tenth Amendments of the Federal Constitution. It appeared from the return to the order to show cause that these creditors had obtained an alternative writ of mandate from the state court directing the county board of supervisors to levy an assessment upon the lands within the District sufficient to pay the amounts due the complaining creditors, and that the proceedings in that court had been suspended pending the proceeding in the bankruptcy court.

First. Chapter X of the Bankruptcy Act is limited to voluntary proceedings for the composition of debts. Aside from the question as to the power of the Congress to provide this method of relief for the described taxing agencies, it is well settled that a

proceeding for composition is in its nature within the federal bankruptcy power. Compositions were authorized by the Bankruptcy Act of 1867, as amended by the Act of 1874, c. 390, sec. 17, 18 Stat. 182. It is unnecessary to the validity of such a proceeding that it should result in an adjudication of bankruptcy. *In re Reiman*, 20 Fed. Cas. 490, 496, 497; *Continental National Bank v. Chicago, Rock Island & Pacific Rwy. Co.*, 294 U. S. 648, 672, 673. In the *Continental Bank* case, in the course of a full consideration of the scope of the federal bankruptcy power and of the evolution of its exercise, we said:

"The constitutionality of the old provision for a composition is not open to doubt. *In re Reiman*, 20 Fed. Cas. 490, 496-497, cited with approval in *Hanover National Bank v. Moyses*, *supra*. [186 U. S. at p. 187.] That provision was there sustained upon the broad ground that the 'subject of bankruptcies' was nothing less than 'the subject of the relations between an insolvent or non-paying or fraudulent debtor, and his creditors, extending to his and their relief'. That it was not necessary for the proceedings to be carried through in bankruptcy was held not to warrant the objection that the provision did not constitute a law on the subject of bankruptcies".

Second. It is unnecessary to consider the question whether Chapter X would be valid as applied to the irrigation district in the absence of the consent of the State which created it, for the State has given its consent. We think that this sufficiently appears from the statute of California enacted in 1934. Laws of 1934, Ex. Sess., ch. 4. This statute (Section 1) adopts the definition of "taxing districts" as described in an amendment of the Bankruptcy Act, to wit Chapter IX approved May 24, 1934, and further provides that the Bankruptcy Act and "acts amendatory and supplementary thereto, as the same may be amended from time to time, are herein referred to as the 'Federal Bankruptcy Statute'". Chapter X of the Bankruptcy Act is an amendment and appears to be embraced within the state's definition. We have not been referred to any decision to the contrary. Section 3 of the state act then provides that any taxing district in the State is authorized to file the petition mentioned in the "Federal Bankruptcy Statute". Subsequent sections empower the taxing district upon the conditions stated to consummate a plan of readjustment in the event of

its confirmation by the federal court. The statute concludes with a statement of the reasons for its passage, as follows:

"There exist throughout the State of California economic conditions which make it impossible for property owners to pay their taxes and special assessments levied upon real or taxable property. The burden of such taxes and special assessments is so onerous in amount that great delinquencies have occurred in the collection thereof and seriously affect the ability of taxing districts to obtain the revenue necessary to conduct governmental functions and to pay obligations represented by bonds. It is essential that financial relief, as set forth in this act, be immediately afforded to such taxing districts in order to avoid serious impairment of their taxing systems, with consequent crippling of the local governmental functions of the State. This act will aid in accomplishing this necessary result and should therefore go into effect immediately".

While the facts thus stated related to conditions in California, similar conditions existed in other parts of the country and it was this serious situation which led the Congress to enact Chapter IX and later Chapter X.¹

Our attention has been called to the difference between Section 80(k) of Chapter IX and Section 83(i) of Chapter X of the Bankruptcy Act in the omission from the latter of the provision requiring the approval of the petition by a governmental agency of the State whenever such approval is necessary by virtue of the local law. We attach no importance to this omission. It is immaterial, if the consent of the State is not required to make the federal plan effective, and it is equally immaterial if the consent of the State has been given, as we think it has in this case. It should also be observed that Chapter X, Section 83(e) provides as a condition of confirmation of a plan of composition that it must appear that the petitioner "is authorized by law to take all action necessary to be taken by it to carry out the plan", and, if the judge is not satisfied on that point as well as on the others mentioned, he must enter an order dismissing the proceeding. The phrase "authorized by law" manifestly refers to the law of the State.

Third.—We are thus brought to the inquiry whether the exercise of the federal bankruptcy power in dealing with a composition

¹ See Hearings before a Subcommittee of the Senate Committee on the Judiciary on S. 1868 and H. R. 5950, 1934, 73rd Cong., 2nd Sess.; Hearings before the House Committee on the Judiciary on H. R. 1670, etc., 1933, 73rd Cong., 1st Sess.; *Ashton v. Cameron County District*, 298 U. S. 513, 533, 534.

of the debts of the irrigation district, upon its voluntary application and with the State's consent, must be deemed to be an unconstitutional interference with the essential independence of the State as preserved by the Constitution.

In *Ashton v. Cameron County District*, *supra*, the court considered that the provisions of Chapter IX authorizing the bankruptcy court to entertain proceedings for the "readjustment of the debts" of "political subdivisions" of a State "might materially restrict its control over its fiscal affairs", and was therefore invalid; that if obligations of States or their political subdivisions might be subjected to the interference contemplated by Chapter IX, they would no longer be "free to manage their own affairs".

In enacting Chapter X the Congress was especially solicitous to afford no ground for this objection. In the report of the Committee on the Judiciary of the House of Representatives,² which was adopted by the Senate Committee on the Judiciary,³ in dealing with the bill proposing to enact Chapter X, the subject was carefully considered. The Committee said:

"Compositions are approvable only when the districts or agencies file voluntary proceedings in courts of bankruptcy accompanied by plans approved by 51 per cent of all the creditors of the district or agency, and by evidence of good faith. Each proceeding is subject to ample notice to creditors, thorough hearings, complete investigations, and appeals from interlocutory and final decrees. The plan of composition cannot be confirmed unless accepted in writing by creditors holding at least 66 2/3 per cent of the aggregate amount of the indebtedness of the petitioning district or taxing agency, and unless the judge is satisfied that the taxing district is authorized by law to carry out the plan, and until a specific finding by the court that the plan of composition is fair, equitable, and for the best interests of the creditors.

"The Committee on the Judiciary is not unmindful of the sweeping character of the holding of the Supreme Court above referred to [in the *Ashton* case], and believes that H. R. 5969 is not invalid or contrary to the reasoning of the majority opinion.

"The bill here recommended for passage expressly avoids any restriction on the powers of the States or their arms of government in the exercise of their sovereign rights and duties. No interference with the fiscal or governmental affairs of a political sub-

² H. Rep. No. 517, 75th Cong., 1st Sess.

³ Sen. Rep. No. 911, 75th Cong., 1st Sess.

division is permitted. The taxing agency itself is the only instrumentality which can seek the benefits of the proposed legislation. No involuntary proceedings are allowable, and no control or jurisdiction over that property and those revenues of the petitioning agency necessary for essential governmental purposes is conferred by the bill.

"There is no hope for relief through statutes enacted by the States, because the Constitution forbids the passing of State laws impairing the obligations of existing contracts. Therefore, relief must come from Congress, if at all. The committee are not prepared to admit that the situation presents a legislative no-man's land. . . . It is the opinion of the committee that the present bill removes the objections to the unconstitutional statute, and gives a forum to enable those distressed taxing agencies which desire to adjust their obligations and which are capable of reorganization, to meet their creditors under necessary judicial control and guidance and free from coercion, and to affect such adjustment on a plan determined to be mutually advantageous".

We are of the opinion that the Committee's points are well taken and that Chapter X is a valid enactment. The statute is carefully drawn so as not to impinge upon the sovereignty of the State, The State retains control of its fiscal affairs. The bankruptcy power is exercised in relation to a matter normally within its province and only in a case where the action of the taxing agency in carrying out a plan of composition approved by the bankruptcy court is authorized by state law. It is of the essence of sovereignty to be able to make contracts and give consents bearing upon the exertion of governmental power. This is constantly illustrated in treaties and conventions in the international field by which governments yield their freedom of action in particular matters in order to gain the benefits which accrue from international accord. Oppenheim, *International Law*, 4th ed., vol. 1, §§ 493, 494; Hyde, *International Law*, vol. 2, § 489; *Perry v. United States*, 294 U. S. 330, 353; *Steward Machine Company v. Davis*, 301 U. S. 548, 597. The reservation to the States by the Tenth Amendment protected, and did not destroy, their right to make contracts and give consents where that action would not contravene the provisions of the Federal Constitution. The States with the consent of Congress may enter into compacts with each other and the provisions of such compacts may limit the agreeing States in the exercise of their respective powers. Const. Art. I, Sec. 10, subd. 3. *Pool v. Fleege*, 11 Pet. 185, 209; *Rhode Island v. Massachusetts*, 12 Pet.

657, 725; *Hinderlider v. La Plata River Company*, decided —. The State is free to make contracts with individuals and give consents upon which the other contracting party may rely with respect to a particular use of governmental authority. See *Fletcher v. Peck*, 6 Cranch, 87, 137; *New Jersey v. Wilson*, 7 Cranch, 164; *Dartmouth College v. Woodward*, 4 Wheat. 518, 643, 644; *Charles River Bridge v. Warren Bridge*, 11 Pet. 420, 549; *Jefferson Branch Bank v. Skelly*, 1 Black. 436, 446. While the instrumentalities of the national government are immune from taxation by a State, the State may tax them if the national government consents (*Baltimore National Bank v. State Tax Commission*, 297 U. S. 209, 211, 212) and by a parity of reasoning the consent of the State could remove the obstacle to the taxation by the federal government of state agencies to which the consent applied.

Nor did the formation of an indestructible Union of indestructible States make impossible cooperation between the Nation and the States through the exercise of the power of each to the advantage of the people who are citizens of both. We had recent occasion to consider that question in the case of *Steward Machine Company v. Davis*, *supra*, in relation to the operation of the Social Security Act of August 14, 1935. 49 Stat. 620. The question was raised with special emphasis in relation to Section 904 of the statute and the parts of Section 903, complementary thereto, by which the Secretary of the Treasury is authorized to receive and hold in the Unemployment Trust Fund all moneys deposited therein by a state agency for a state unemployment fund and to invest in obligations of the United States such portion of the Fund as is not in his judgment required to meet current withdrawals. The contention was that Alabama in consenting to that deposit had "renounced the plenitude of power inherent in her statehood". 301 U. S. at pp. 595, 596. We found the contention to be unsound. As the States were at liberty upon obtaining the consent of Congress to make agreements with one another, we saw no room for doubt that they may do the like with Congress if the essence of their statehood is maintained without impairment. And we added that "Nowhere in our scheme of government—in the limitations express or implied of our federal constitution—do we find that she [the State] is prohibited from assenting to conditions that will assure a fair and just requital for benefits received".

In the instant case we have cooperation to provide a remedy for a serious condition in which the States alone were unable to afford relief. Improvement districts, such as the petitioner, were in distress. Economic disaster had made it impossible for them to meet their obligations. As the owners of property within the boundaries of the district could not pay adequate assessments, the power of taxation was useless. The creditors of the district were helpless. The natural and reasonable remedy through composition of the debts of the district was not available under state law by reason of the restriction imposed by the Federal Constitution upon the impairment of contracts by state legislation. The bankruptcy power is competent to give relief to debtors in such a plight and, if there is any obstacle to its exercise in the case of the districts organized under state law it lies in the right of the State to oppose federal interference. The State steps in to remove that obstacle. The State acts in aid, and not in derogation, of its sovereign powers. It invites the intervention of the bankruptcy power to save its agency which the State itself is powerless to rescue. Through its cooperation with the national government the needed relief is given. We see no ground for the conclusion that the Federal Constitution, in the interest of state sovereignty, has reduced both sovereigns to helplessness in such a case.

Fourth.—As the bankruptcy power may be exerted to give effect to a plan for the composition of the debts of an insolvent debtor, we find no merit in appellant's objections under the Fifth Amendment. *In re Reiman, supra; Continental National Bank v. Chicago, Rock Island & Pacific Rwy. Co., supra.*

The judgment of the District Court is reversed and the cause is remanded for further proceedings in conformity with this opinion.

It is so ordered.

Mr. Justice McREYNOLDS and Mr. Justice BUTLER are of the opinion that the principle approved in *Ashton v. Cameron County District*, 298 U. S. 513, is controlling here and requires affirmation of the questioned decree.

Mr. Justice CARDOZO took no part in the consideration and decision of this case.